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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021/2022

UPP4622 – PROFESSIONAL PRACTICE II

(All Sections / Groups)

26th APRIL 2022

Reading Time: 09.00 a.m. – 09.15 a.m.

(15 Minutes)

Answering Time: 09.15 a.m. – 12.30 p.m.

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in the question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 5 pages with 5 Questions only.
3. This paper consists of two parts. **PART A is COMPULSORY. PART B to attempt either Question 4A or 4B.** The distribution of the marks for each question is given.
4. Students are only allowed to bring in a **CLEAN** and **ORIGINAL COPY** of the following statutes into the exam venue:
 - (a) Probate and Administration Act 1959
 - (b) Wills Act 1959
 - (c) Distribution Act 1958
 - (d) Small Estate (Distribution) Act 1955
 - (e) Public Trust Corporation Act
 - (f) Rules of Court 2012
 - (g) Civil Law Act 1956
 - (h) Contracts Act 1950
 - (i) Court of Judicature Act 1964
 - (j) Limitation Act 1953
 - (k) Road Transport Act 1987

“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY**QUESTION 1**

By way of Letter of Award dated 19.09.2014, Capital Sdn. Bhd. (“CSB”) appointed Lexis Precast Sdn. Bhd. (“LPSB”) as a subcontractor for “Design, Supply, Delivery, Installation, Grouting and Other Associated Works of Industrial Building System (IBS) Precast Components (Excluding Cranage)” (“the said Works”) at Technology Park Malaysia, Bukit Jalil, 78000, Kuala Lumpur for the sum of RM2,000,000.00.

LPSB completed the said Works and issued the following invoices between January 2015 to April 2015, the details of which are as follows: -

No	Invoice No.	Amount
1	LPSB/MSCP3/15/01 -Progress Claim No. 1	RM500,000.00
2	LPSB/MSCP3/15/02 -Progress Claim No. 2	RM500,000.00
3	LPSB/MSCP3/15/03 -Progress Claim No. 3	RM500,000.00
4	LPSB/MSCP3/15/03 -Progress Claim No. 3	RM500,000.00

CSB did not at any material time dispute and/or object any of the invoices issued by LPSB. In fact, CSB had made part payment for LPSB/MSCP3/15/01-Progress Claim No. 1, leaving a balance of RM1,500,000.00 due and owing to LPSB. However, CSB did not make any further payment despite numerous reminders given by LPSB.

LPSB has appointed your firm, Messrs Floyd & Partners to represent them.

- (a) Identify the relevant documents and draft a letter to your client to request for the same to be furnished to your firm as soon as possible.

(10 marks)

- (b) Draft a Letter of Demand to CSB for the balance of RM1,500,000.00 which is still due and owing to LPSB.

(15 marks)

(Total: 25 marks)

...continued

QUESTION 2

- (a) In contrast to the loss of future dependency and loss of future earnings, the assessment for permanent future nursing care/medical expenses has been left to fend itself by the legislators; allowing discretion of the Courts to apply an assortment of methods to calculate the years' purchase for loss of future permanent nursing care costs.

In light to the above, and by referring to relevant provisions and case law, discuss the approaches used by Malaysian courts in relation to assessment for permanent future nursing care/medical expenses under personal injury claims.

(10 marks)

- (b) “The test for support is the direct benefit to the claimant, not vicarious, but the claimant need not prove he was dependant on the financial support. A requirement that a claimant must be dependent on the support from a deceased will not be giving the natural meaning to plain and ordinary words in s. 7(3). The finding by the learned Judge that the loss of support was not proved as the appellant was not dependant on the deceased could not be supported as the appellant's direct benefit from the RM700, as a member of that family was never considered.”

Jeffrey Tan JC in *Muhammad bin Hashim v Teow Teik Chai* [1996] 1 CLJ 615

In light to the above, and by referring to relevant provisions and case law, discuss the latest position of Malaysian law in relation to eligible person for an award for loss of actual support under fatal injury claims.

(15 marks)

(Total: 25 marks)

...continued

QUESTION 3

As an executor for Natsu's estate, Gray applied and obtained a letter of representation. He started to administer the estate by paying a few outstanding debts. A year later, before he completed the administration of Natsu's estate, Gray met with an accident and died.

Gray died in December 2019 without leaving a Will. His parents and grandparents have predeceased him. He was not married and only Jellal, his brother and Lucy, his aunty survived him. Gray owed a certain amount of money to Orga. Upon being informed of Gray's death, Orga had entered a Caveat against any application for a letter of representation.

(*the parties above are non-Muslims unless stated otherwise)

(a) Solve the following issues. Support your answer with reasons and authorities.

(i) What is the type of letter of representation to be applied by Natsu's beneficiaries as a result of Gray's death?

(7 marks)

(ii) Who is entitled to apply for a letter of representation in relation to Gray's estate if Jellal had migrated to Australia?

(5 marks)

(iii) Can Orga enter a Caveat and how can Jellal set it aside?

(4 marks)

(b) A month after the letter of representation was extracted, Lucy found out that there is a Will left by Gray. She requested for your advice.

Illustrate the proper action to be taken by Lucy and the mode of commencement of that action in court.

(9 marks)

(Total: 25 marks)

...continued

PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B**QUESTION 4A**

Carla had executed a Will in July, 2000. Below is an excerpt of the Will.

I give the following:
(a) my painting and set of jewellery to my niece, Juvia;
(b) all my personal chattels not bequeathed by this my Will together with any of the specific legacies in which shall fail for any reason to my brother, Naruto.

I give the remainder of my estate to my parent absolutely.

My father, Makarov will carry out all my wishes.

Carla died in July, 2018 due to dengue fever. Carla's mother, uncles, aunts, nieces and grandparents all had predeceased her. Only Naruto had survived her.

Carla's father, Makarov died in November, 2018 after he obtained the letter of representation. Makarov left a Will and had appointed his only brother, Laxus as the executor of his estate. Makarov died leaving a car worth RM20,000 and a land worth RM100,00.

(*the parties are non-Muslims unless stated otherwise)

- (a) Solve the following issues. Support your answer with reasons and authorities.
- (i) Who will be the personal representative of Carla's estate and what is the type of letter of representation to be applied by that person?
(7 marks)
- (ii) Where should Laxus filed his application for a letter of representation in relation to Makarov's estate?
(4 marks)
- (iii) Laxus had disposed Makarov's land in order to settle the deceased's debt. He did this without consent of the court and the beneficiaries.
(7 marks)
- (b) Naruto wishes to know how Carla's estate will be distributed.
Present your findings to Naruto.
(8 marks)

(Total: 25 marks)

QUESTION 4B

On 1st January 2020, Mahmud, a 56-year old lawyer and his colleague, Mamat, who was then 22 years old, were involved in an accident. Mahmud's car bearing registration no. MAH123 collided into the back of a bus driven by John Atkin, bearing registration no. MAU456. The collision was said to be caused due to the sudden stop made by John Atkin without warning. However, John Atkin claimed that the bus did not stop suddenly but had instead slowed down before stopping and had in fact stopped and remained stationary for a few minutes before the accident occurred. Mamat's family claimed that John was wholly responsible for the accident on the ground that he stopped the bus suddenly without warning. However, John Atkin claimed that Mahmud contributed towards the accident for not keeping a safe distance from the bus.

In that collision, both Mahmud and Mamat were thrown from the car with Mahmud suffering the more serious injuries and died on the spot while Mamat suffered severe brain damage described as acute subdural haemorrhage on the left side of the brain with midline shift of 1.5 cm and punctuate haemorrhages around the brain stem. The said injuries were of such severity that the aftermath of the collision caused Mamat to be in a vegetative state. In addition to the injuries to his brain, Mamat also suffered a 3 cm laceration wound over the right brow, a 2 cm laceration wound over his scrotum and a distal radius bone fracture.

Mahmud was a senior lawyer who worked for Rajoo & Partners and earning a salary of RM15,000.00 per month. Mahmud left behind a wife, Maria who is unemployed and 3 children aged 15, 20 and 24 and a mother, Siti aged 80 years old. During his life, Mahmud gave Maria RM1,000.00 per month for household expenses RM500.00 for her personal needs. Mahmud also engaged an Indonesian maid to look after Siti with monthly salary of RM1000.00 per month. Maria remarried recently with her old boyfriend. Mamat was doing his chambering at the same firm and was receiving RM550.00 as a pupillage allowance, and he is expected to be retained and been paid a salary as a junior lawyer of RM3,000.00 by his office once he completed his pupillage. Mamat was brought to Pantai Hospital, Ayer Keroh and received treatment there until he was discharged. The hospital bills for 3-month treatment and hospitalization was RM125,000.00. Both his parents visited him on a daily basis and the cost of the transportation was RM50.00 per trip. His mother, Salmah, took 2 months of unpaid leave and later quit her job to take care of Mamat. Her last salary as a clerk was RM3,000.00. After 3 months, Mamat was discharged from Pantai Hospital. However, Mamat's doctor, Dr. Lim said that it is difficult to predict Mamat's life expectancy but his injuries would not shorten his life and he might have another 35-40 years more to live. Mamat could be expected to be looked after by his 48-year old mother and 47-year old father and by which time his parents would not be able to care for him. He would need to be cared for "by the likes of a domestic help or a good nursing home". He also suggests that Mamat be treated by a Chinese physician as the conventional physiotherapy may not be enough.

Your firm, Messrs JM William & Co. has been appointed by Jitu Janji Sdn. Bhd., the insurance company for John's vehicle. Draft a letter of opinion regarding the claim of this accident.

(Total: 25 marks)

End of page.